

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JOHN WOJTANOWICZ,

Appellant,

v.

DEPARTMENT OF LABOR AND  
INDUSTRIES,

Respondent.

) Case No. DISM-03-0006

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

**I. INTRODUCTION**

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair. The hearing was held at the office of the Personnel Appeals Board, in Olympia, Washington, on January 15 and 16, 2004. GERALD L. MORGEN, Vice Chair; and BUSSE NUTLEY, Member, reviewed the file and record and participated in the decision in this matter.

1.2 **Appearances.** Appellant John Wojtanowicz was present and was represented by Garth Wojtanowicz, Attorney at Law, of Danielson, Harrigan, Leyh & Tollefson, L.L.P. Mickey Newberry, Assistant Attorney General, represented Respondent Department of Labor and Industries.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, insubordination, and gross misconduct. Respondent alleges that Appellant willfully disregarded management's directive to complete all compliance reviews assigned to him.

## II. FINDINGS OF FACT

2.1 Appellant was a permanent employee for Respondent Department of Labor and Industries. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 21, 2003.

2.2 Appellant was appointed to an Apprenticeship Coordinator 1 position in Region 2 on December 1, 1999. Appellant was an excellent employee, and had no history of prior formal disciplinary action.

2.3 By letter dated December 5, 2002, Dana Steele, Region 2 Administrator, informed Appellant of his dismissal effective December 20, 2002. Mr. Steele charged Appellant with neglect of duty, insubordination, and gross misconduct. Respondent alleged that Appellant willfully disregarded management's directive to complete all compliance reviews assigned to him.

2.4 There is approximately one Apprenticeship Coordinator per region in the state, and the Department of Labor and Industries (L&I) has a total of six regions throughout the state. Appellant was assigned to Region 2 (King County) which has two apprenticeship coordinators because the region is large. Because one of the Region 2 Apprenticeship Coordinator positions was vacant for approximately one year, Appellant was required to perform the duties of both positions until the position was filled.

1 2.5 One of the duties and responsibilities of an Apprenticeship Coordinator is to complete  
2 federally required annual compliance reviews of the apprenticeship programs to which they are  
3 assigned. Compliance reviews are performed to review the record keeping of all apprenticeship  
4 programs, and to determine whether the apprenticeship programs are complying with federal laws  
5 and regulations requiring equal opportunity. The federal government reserves the right to withdraw  
6 recognition if apprenticeship programs fail to comply with federal laws and regulations, or if  
7 compliance reviews are not completed. The Apprenticeship Council governs registered  
8 apprenticeship programs in the State of Washington and is required to enforce the federal  
9 regulations.

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11 2.6 In April 2001, L&I and the Apprenticeship Council agreed to a goal for L&I to complete all  
12 1999/2000 compliance reviews by June 30, 2002. Soon thereafter, L&I communicated this  
13 agreement to all its Apprenticeship Coordinators and continued to periodically remind them of the  
14 deadline. Appellant was assigned a total of 25 compliance reviews.

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16 2.7 Both Appellant and Respondent agree that compliance reviews are difficult, cumbersome,  
17 and time-consuming. In September 2001, newly created forms for completing the reviews were  
18 distributed to the Apprenticeship Coordinators, and training was provided on how to use the new  
19 forms in November 2001.

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21 2.8 In January 2002, Mr. Thomas Bourne, Regional Supervisor, instructed Appellant to devote  
22 50 percent of his time to completing his assigned compliance reviews.

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24 2.9 Beginning in June 2002, Appellant suffered various health problems, followed by other  
25 personal issues that required him to be out of the office. Mr. Bourne approved a substantial amount  
26 of time for Appellant to take off work during the subsequent three to four months.

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2 2.10 By memo dated August 28, 2002, Mr. Bourne directed Appellant to dedicate himself solely  
3 to completing the 1999/2000 compliance reviews by the October 2002 Quarterly Council Meeting.  
4 Appellant was to discontinue his other work, including the development of new standards for  
5 various apprenticeship programs. Appellant expressed concern about the impact that only  
6 concentrating only on compliance reviews would have on the rest of his work and on the programs.

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8 2.11 In late August 2002, Chris Bowe, Regional Administrator and Mr. Bourne's supervisor,  
9 instructed Appellant to resume working on the development of new standards for one of the  
10 apprenticeship programs assigned to him.

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12 2.12 On August 30, 2002, Appellant informed Mr. Steele, Region 2 Administrator, he would no  
13 longer perform compliance reviews as directed by Mr. Bourne.

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15 2.13 On September 20, 2002, Appellant had completed 10 of the 25 compliance reviews assigned  
16 to him. Appellant informed Nancy Mason, Apprenticeship Program Coordinator, and Ernie  
17 LaPalm, Operations Manager, both of whom report to Mr. Steele, that he had no intention of  
18 completing another compliance review, nor did he see the purpose in doing them at all.

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20 2.14 On September 26, 2002, Appellant informed Mr. Bourne he would not perform compliance  
21 reviews as directed because they were a waste of time.

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23 2.15 By letter dated October 18, 2002, Mr. Steele informed Appellant that L&I was considering  
24 taking formal disciplinary action against him, up to and including dismissal.

1 2.16 On October 31, 2002, Mr. Steele conducted a pre-disciplinary meeting with Appellant; Mr.  
2 Gregory J. Murphy, Appellant's attorney; Julie Heckman, Acting Insurance and Consultation  
3 Program Manager; and Stephen Hardy, Human Resource Consultant. Mr. Steele attempted to work  
4 with Appellant to develop a plan to complete the compliance reviews within six months; however,  
5 Appellant stated he had decided to maintain his position and refused to complete any more  
6 compliance reviews.

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8 2.17 Mr. Steele determined Appellant understood L&I's goals and directives regarding the  
9 compliance reviews, and was insubordinate when he willfully disregarded management's directives  
10 to complete the compliance reviews. Mr. Steele also determined Appellant neglected his duty as an  
11 Apprenticeship Coordinator 1 when he failed to complete the compliance reviews assigned to him.

12  
13 2.18 In determining the level of discipline, Mr. Steele considered Appellant's employment  
14 record, his refusal to perform compliance reviews after September 20, 2002, and his refusal during  
15 the pre-disciplinary meeting to develop a plan to complete the remaining compliance reviews. Mr.  
16 Steele also considered the impact Appellant's actions had on L&I's ability to achieve its mission of  
17 completing compliance reviews as required by the Apprenticeship Council and the federal  
18 government. If L&I failed to complete the compliance reviews, the agency risked sanctions from  
19 both organizations.

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21 2.19 Mr. Steele did not want to dismiss Appellant; however, he believed Appellant left him no  
22 choice and would continue to be insubordinate if he remained employed at L&I. Mr. Steele  
23 concluded that dismissal was the only appropriate sanction to assure that Appellant's continuing  
24 misconduct would not harm the apprenticeship program, nor L&I's relationship with the other  
25 agencies and organizations responsible for program goals.

### III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues one of the duties of an L&I Apprenticeship Coordinator is to complete annual compliance reviews of assigned apprenticeship programs. Respondent asserts compliance reviews are required by the federal government, and Appellant was fully aware of the goal to have all compliance reviews for 1999/2000 completed by June 30, 2002. Respondent contends that Appellant was the only Apprenticeship Coordinator who refused to complete his assigned compliance reviews. Respondent argues Appellant was dismissed for refusing to complete the compliance reviews as directed. Respondent asserts that Appellant, beginning in September 2002, informed all supervisors in his line of authority that he had no intention of completing any more compliance reviews after finishing 10 of the 25 assigned to him. Respondent contends Appellant was given several opportunities to change his mind, but he failed to take advantage of those opportunities. Respondent argues Appellant was given one last opportunity at the pre-disciplinary meeting; however, he once again refused to follow management's directive. Appellant's actions placed L&I at risk for receiving a sanction by the Apprenticeship Council or the federal government. Respondent asserts Mr. Steel had no choice but to dismiss Appellant based on his continuing insubordination and neglect of duty.

3.2 Appellant argues he diligently worked to satisfy *all* his duties as an Apprenticeship Coordinator, including compliance reviews. Appellant asserts that Respondent's allegation of neglect of duty penalized Appellant for taking substantial *approved* compensatory time, vacation, and sick leave from work. Appellant contends Respondent knew he suffered from a severe stress-related illness that affected his ability to perform his duties. Appellant argues he had an excellent employment history, he was the only Apprenticeship Coordinator for Region 2 for approximately one year, and he sought to fulfill the goals of the department to the best of his ability with the resources he was given. Appellant asserts he did not engage in insubordination or gross misconduct, because he acted with department approval when he worked on developing standards

1 for one of his apprenticeship programs rather than working solely on compliance reviews.  
2 Appellant contends that management failed to address the lack of administrative and supervisory  
3 support and therefore deprived him of an opportunity to solve the problems. Appellant argues his  
4 supervisor failed to follow agency policy in performing timely performance reviews and deprived  
5 him of another opportunity to resolve his staffing and workload problems. Appellant asserts his  
6 refusal to complete the 15 remaining compliance reviews was justified because he needed to take  
7 steps to get the department's attention to address his concerns and provide the support he needed.

#### 8 9 IV. CONCLUSIONS OF LAW

10 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
11 herein.

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13 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
14 the charges upon which the action was initiated by proving by a preponderance of the credible  
15 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
16 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
17 Corrections, PAB No. D82-084 (1983).

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19 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
20 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
21 of Social & Health Services, PAB No. D86-119 (1987).

22  
23 4.4 Respondent has met its burden of proof that Appellant neglected his duty as an  
24 Apprenticeship Coordinator 1 to complete all the annual compliance reviews assigned to him. As  
25 an employee, Appellant had a duty to complete all work assigned to him.

1 4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior  
2 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.  
3 Dep't of Social & Health Services, PAB No. D94-025 (1995).

4  
5 4.6 Respondent has met its burden of proof that Appellant engaged in insubordination when he  
6 disregarded management's directives to complete all the annual compliance reviews assigned to  
7 him. It is clear that Appellant knew what was expected of him and understood the agency's goal to  
8 have all compliance reviews completed by June 30, 2002; however, he repeatedly informed all  
9 supervisors in his line of authority, including the Appointing Authority, Mr. Steele, that he had no  
10 intention of performing any more compliance reviews.

11  
12 4.7 Gross misconduct is flagrant misbehavior that adversely affects the agency's ability to carry  
13 out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant  
14 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's  
15 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

16  
17 4.8 Respondent has met its burden of proof that Appellant's actions rose to the level of gross  
18 misconduct when he failed to complete the annual compliance reviews assigned to him, which were  
19 required by federal law and agency policy.

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21 4.9 In determining whether a sanction imposed is appropriate, consideration must be given to  
22 the facts and circumstances, including the seriousness and circumstances of the offenses. The  
23 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to  
24 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
25 program. An action does not necessarily fail if one cause is not sustained unless the entire action  
26 depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).



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2 4.10 Mr. Steele gave Appellant one last opportunity to agree to a plan to complete the  
3 compliance reviews at the October 31, 2002 pre-determination meeting; however, Appellant refused  
4 to cooperate. Although the Board considered modifying the dismissal to a demotion, such a  
5 sanction would not be appropriate based on Appellant's refusal after Mr. Steele warned him that  
6 failure to cooperate would result in dismissal.

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8 4.10 We considered Appellant's refusal to complete his assigned annual compliance reviews, the  
9 adverse impact his refusal had on the agency, the agency's efforts to resolve the situation and avoid  
10 terminating Appellant, and Appellant's lack of cooperation to those efforts. We conclude that  
11 Respondent has established that the disciplinary sanction of dismissal was not too severe and was  
12 appropriate under the circumstances presented here. Therefore, the appeal should be denied.

13  
14 **V. ORDER**

15 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of John Wojtanowicz is denied.

16  
17 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

18  
19 WASHINGTON STATE PERSONNEL APPEALS BOARD

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21 \_\_\_\_\_  
22 Gerald L. Morgen, Vice Chair

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25 Busse Nutley, Member

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4 DISSENT

5 I do not question the majority's findings as to the allegations at issue in this case. In fact, I concur  
6 with the majority in holding that those allegations were proved by a preponderance of the evidence  
7 presented.

8 Nevertheless, although Appellant failed to comply with his supervisor's order to conduct all the  
9 required compliance reviews, Appellant had no prior history of non-compliance, and had in fact  
10 been an exemplary employee. Furthermore, during the timeframe in question, Appellant was  
11 responsible for performing not only his own job duties, but those of another vacant position as well.

12 In my view, the sanction imposed by Respondent, and upheld by a majority of this Board, is too  
13 severe. A more appropriate sanction would have been either demotion or a lengthy suspension  
14 without pay. Therefore, I respectfully dissent.  
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Walter T. Hubbard, Chair  
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